

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

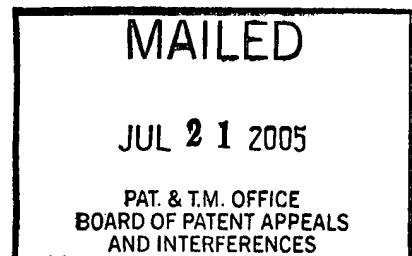
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte CHI-SEN HSU, SHU-LING FENG and YUN-WEN LIAO

Appeal No. 2005-0968
Application No. 09/998,343

ON BRIEF



Before HAIRSTON, SAADAT, and MACDONALD, ***Administrative Patent Judges.***

MACDONALD, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-12.

Invention

Appellants' invention relates to a system and method for managing the work in process (WIP) workload within the fabrication facility comprises:

(1) a means for storing identifying information for a work in process (WIP) workload lot; (2) a means for accessing the identifying information for the work in process (WIP) workload lot; and (3) a means for requesting and effecting a change in production of the work in process (WIP) workload lot after accessing the

identifying information for the work in process (WIP) workload lot, wherein the means for requesting the change in production of the work in process (WIP) workload lot provides for direct access by a customer. Appellants' specification at page 5, paragraph 0016.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A computer assisted system for managing a work in process workload comprising:

means for storing identifying information for a microelectronic fabrication work in process workload lot;

means for accessing the identifying information for the work in process workload lot;

means for requesting and effecting a change in production of the work in process workload lot after accessing the identifying information for the work in process workload lot, wherein the means for requesting the change in production of the work in process workload lot provides for direct access by a customer.

References

The references relied on by the Examiner are as follows:

Chacon	6,128,588	Oct. 3, 2000
Athavale et al. (Athavale)	6,539,386	Mar. 25, 2003 (Filed Jun. 15, 2000)

Rejections At Issue

Claims 1-12 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Athavale and Chacon.

Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.¹

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated *infra*, we affirm the Examiner's rejection of claims 1-12 under 35 U.S.C. § 103.

Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

Appellants have indicated that for purposes of this appeal the claims stand or fall together in four groupings. See page 4 of the brief. However, Appellants do not argue each group of claims separately and explain why the claims of each group are believed to be separately patentable. See pages 4-10 of the brief.

¹ Appellants filed an appeal brief on July 2, 2004. The Examiner mailed an Examiner's Answer on October 6, 2004.

Therefore, Appellants have not met the requirements of 37 CFR § 1.192 (c)(7) (July 1, 2002) as amended at 62 Fed. Reg. 53169 (October 10, 1997), which was controlling at the time of Appellants' filing of the brief. 37 CFR § 1.192 (c)(7) states:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

We will, thereby, consider Appellants' claims as standing or falling together in a single group based on Appellants' argument, and we will treat claim 1 as a representative claim of that group. If the brief fails to meet either requirement, the Board is free to select a single claim from each group and to decide the appeal of that rejection based solely on the selected representative claim. *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004).

I. Whether the Rejection of Claims 1-12 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one

of ordinary skill in the art the invention as set forth in claims 103. Accordingly, we affirm.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). ***See also In re Piasecki***, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. ***In re Fine***, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. ***See also Piasecki***, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. “In reviewing the [E]xaminer’s decision on appeal, the Board must necessarily weigh all of the evidence and argument.” ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. “[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency’s conclusion.” ***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 1, Appellants argue at pages 5-6 of the brief, "Chacon in particular teaches away from [Appellants'] claimed invention," and "Chacon clearly teaches away from appellants, claimed invention since appellants' claimed invention is directed towards a production control system and method where a customer may experiment with actual production." We find Appellants' argument unpersuasive.

We have reviewed Appellants' claim 1 and find no mention of experimentation in the claim. Further, we find that the Examiner has relied on Chacon (answer at page 4) solely to teach that it is known to use a control system for scheduling and routing microelectronic fabrication work in progress. As Appellants themselves admitted at paragraph 003 of the specification, such control systems are "[c]ommon in the art of microelectronic fabrication."

We also note that even if "experimentation" were claimed, as Appellants point out, Chacon teaches "a practical alternative to expensive experimentation on [an] actual production system." The fact that Chacon teaches an alternative system without experimentation does not constitute a teaching that artisans should avoid the experimentation method altogether. A prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness; however, "the nature of the teaching is highly relevant and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for

the same use.” *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

Appellants argue at pages 7-9 of the brief, that process “changes” in Athavale are limited to comparatively inexpensive, lower cost, simple (non-complex) manufacturing processes and would not be applicable to expensive, high cost, complex microelectronic fabrication processes such as Chacon. We find this argument unpersuasive.

The “change in production” of claim 1 is disclosed in Appellants’ specification at page 15 as a simple customer order “hold” operation. Appellants’ claim clearly covers simple process changes in a complex microelectronic manufacturing facility. While we see some merit to Appellants’ argument that Athavale is not sufficient to teach customer control of complex process steps (such as controlling doping levels), that is not the claim we have before us. We find that Athavale addresses and solves the problem of allowing customer control of simple process operations and as pointed out by the Examiner, there is more than sufficient motivation at column 10 of Athavale to use Athavale’s improvement in other manufacturing control systems to allow the customer to make simple process changes irregardless of the overall complexity of the manufacturing process.

Therefore, for the reasons discussed above, we will sustain the Examiner’s rejection under 35 U.S.C. § 103.


Conclusion

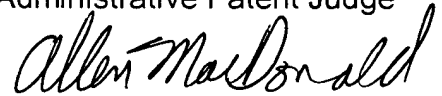
In view of the foregoing discussion, we have sustained the rejection under 35 U.S.C. § 103 of claims 1-12.

AFFIRMED

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).


KENNETH W. HAIRSTON
Administrative Patent Judge


MAHSHID D. SAADAT
Administrative Patent Judge


ALLEN R. MACDONALD
Administrative Patent Judge

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